

Remarks

Claims 29 and 43 through 61 were rejected under 35 USC 102(b) as being anticipated by U.S. Patent 5,829,441 to Kidd et al (hereinafter the '441 patent). Claims 30 through 42 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form to include all of the limitations from claim 29. Claims 29 through 61 remain in the application. By this response, all of the claims have been amended, and new claim 62 has been added. In making the above amendments, no new matter was added.

During a telephone interview with the Examiner on or about February 25, 2004, the Applicant's counsel pointed out that the '441 patent did not teach all of the attributes of the device claimed in the Applicant's October 15, 2003 response, particularly noting that the hinged attachment of the extension members to the fastener was nowhere in evidence in the '441 patent. The Examiner, while agreeing with counsel's assessment, responded by stating that much of what Applicant was giving patentable weight to (particularly the first and second extension members 54 shown in the Applicant's original FIGS. 2 and 3) was in fact in the claim preamble and therefore not recited structure.

The amended claims (starting with independent claim 29) now positively recite a dental splint rather than a fastener portion of the splint. Recast in such form, the Applicant is of the belief that the claims are now in condition for allowance. "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970)). Thus, in addition to the other recited features, any purported reference must also include the hinged attachment of the extension members to the fastener. By not teaching the hinged relationship between the extension members and the fastener to which they are coupled, the '441 patent fails as a matter of law (and USPTO practice as set forth in MPEP 2131) the requirement for being an anticipatory reference.

Serial No. 09/827,262
Docket No. GRI 0024 PA/40333.27

CONCLUSION

For all of the above reasons, the Applicant respectfully submits that the application and all claims in it are now in condition for allowance. The Examiner is encouraged to contact the undersigned to resolve efficiently any formal matters or to discuss any aspects of the application or of this response. Otherwise, early notification of allowable subject matter is respectfully solicited.

Respectfully submitted,
DINSMORE & SHOHL L.L.P.

By 

John D. Reed
Registration No. 46,506

One Dayton Centre
One South Main Street, Suite 500
Dayton, Ohio 45402-2023
(937) 223-2050
Facsimile: (937) 223-0724